

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF)
ART'S FOOD CENTER, INC.)
Appellant,)
vs.)
PUGET SOUND AIR POLLUTION)
CONTROL AGENCY,)
Respondent.)

PCHB No. 118

FINDINGS OF FACT,
CONCLUSIONS AND ORDER

This matter, the appeal of a \$250.00 civil penalty for an alleged violation of respondent's Regulation I, came before the Pollution Control Hearings Board (Walt Woodward, hearing officer), in the Board's conference room, Room 311, Insurance Building, Olympia, at 11:00 a.m., September 7, 1972.

Appellant was represented by Arthur L. Case, President of Art's Food Center, Inc. and by Richard Rice, Secretary-Treasurer of the corporation. Respondent appeared through its counsel, Keith D. McGoffin. Irene Dahlgren, court reporter, recorded the proceedings.

1 Witnesses were sworn and testified. Exhibits were offered and
2 admitted.

3 On the basis of testimony heard and exhibits examined, the Pollution
4 Control Hearings Board prepared Proposed Findings of Fact, Conclusions
5 and Order which were submitted to the appellant and respondent on
6 November 13, 1972. No objections or exceptions to the Proposed
7 Findings, Conclusions and Order having been received, the Pollution
8 Control Hearings Board makes and enters the following:

9 FINDINGS OF FACT

10 I.

11 Appellant operates a food store located in the Rose Hill Shopping
12 Center near Kirkland, King County. Adjacent to the food store is an
13 incinerator owned and controlled by the shopping center. There are
14 several other business establishments in the shopping center, each of
15 which is entitled to use the incinerator. The incinerator is of a
16 type not approved by the Puget Sound Air Pollution Control Agency in
17 relation to its smoke emission standards.

18 II.

19 On July 15, 1971 and September 30, 1971, the incinerator was the
20 subject of two Notices of Violation issued by two inspectors of the
21 Puget Sound Air Pollution Control Agency against appellant. In both
22 instances appellant refused to concede responsibility for the alleged
23 violations. There were no civil penalties assessed for these two
24 violations.

25 III.

26 In October of 1971, appellant and respondent reached agreement on

27 FINDINGS OF FACT,
CONCLUSIONS AND ORDER

1 a compliance schedule for replacement, by April 1, 1972, of the company's
2 use of the incinerator by a compactor. On three similar compliance
3 schedules in connection with other stores owned by appellant, compactors
4 had been installed on schedule; however, there was a delay in installing
5 the compactor at Rose Hill and appellant began hauling its wastepaper
6 to a King County dump on April 4, 1972. Prior to that date, the
7 corporation instructed its employees at the Rose Hill store not to use
8 the incinerator after the compliance schedule expiration date of
9 April 1, 1972.

10 IV.

11 On April 1, 1972 and on April 4, 1972, two more Notices of
12 Violation were issued to appellant by respondent for alleged burning
13 violations at the incinerator. In connection with the April 4, 1972
14 Notice of Violation No. 5811, Notice of Civil Penalty No. 249, in the
15 sum of \$250.00, also was invoked against appellant by the respondent.

16 V.

17 Inspectors of the Puget Sound Air Pollution Control Agency
18 testified concerning "an elderly gentleman" hauling cardboard boxes
19 and other wastepaper out of the food store and depositing it in the
20 incinerator where fires were burning, but company officials deny
21 having such a person as described by the inspectors on the payroll of
22 appellant.

23 From these facts, the Pollution Control Hearings Board comes to
24 these

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27 FINDINGS OF FACT,
CONCLUSIONS AND ORDER

1 CONCLUSIONS

2 I.

3 We are impressed with the sincerity of Mr. Case to have his
4 corporation in compliance with regulations of the Puget Sound Air
5 Pollution Control Agency, with his record of compliance with schedules
6 for eliminating air polluting devices and with his orders to employees
7 not to use devices no longer approved by the Agency.

8 II.

9 However, we cannot ignore the testimony of inspectors of respondent
10 relative to their witnessing, on several occasions, a man carrying
11 wastepaper from the store to the incinerator where a fire was burning.

12 III.

13 We conclude, therefore, that appellant was in violation of
14 Section 9.05 of Regulation I on April 4, 1972, a violation which appears
15 to have occurred despite Mr. Case's firm orders to his employees not to
16 use the incinerator after April 1, 1972.

17 IV.

18 We feel that Notice of Civil Penalty No. 249, in the maximum
19 allowable amount of \$250.00, is excessive and unwarranted in view of the
20 corporation's otherwise excellent record of compliance with requirements
21 of respondent.

22 Therefore, the Pollution Control Hearings Board issues this

23 ORDER

24 As to Notice of Violation No. 5811, the appeal is denied, but
25 Notice of Civil Penalty No. 249 is remanded to respondent for imposition
26 of a nominal penalty more appropriate to the circumstances.

27 FINDINGS OF FACT,
CONCLUSIONS AND ORDER

1 DONE at Olympia, Washington this 27th day of December, 1972.

2 POLLUTION CONTROL HEARINGS BOARD

3 Walt Woodward
4 WALT WOODWARD, Chairman

5 James T. Sheehy
6 JAMES T. SHEEHY, Member

7 Matthew W. Hill
8 MATTHEW W. HILL, Member

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26 FINDINGS OF FACT,
27 CONCLUSIONS AND ORDER